U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

FILE: [redacted] Office: Manila Date: MAR 2 1 2000

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 212(g) of the Immigration and Nationality Act, 8 U.S.C. 1182(g)

IN BEHALF OF APPLICANT: Self-represented

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

Terrance M. O'Reilly, Director
Administrative Appeals Office

[redacted]

DISCUSSION: The waiver application was denied by the Officer in Charge, Manila, Philippines, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Philippines who was found to be inadmissible to the United States by a consular officer under § 212(a)(1)(A)(iii)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(1)(A)(iii)(I), as an alien who is determined to have a Class A medical condition; a physical or mental disorder and associated harmful behavior. The applicant is the spouse of a United States citizen. The applicant seeks the above waiver under § 212(g) of the Act, 8 U.S.C. 1182(g), in order to join his wife in the United States.

The officer in charge denied the application after determining that sufficient time has not elapsed in order to safely establish that the applicant is in remission and denied the application accordingly.

On appeal, the applicant discusses the circumstances surrounding the incident which resulted in his inadmissibility. The applicant states that he has quit heavy drinking and only drinks moderately. The applicant states that his three children are growing up without his guidance. He requests to be reunited with his family.

Section 212(a)(1)(A)(iii) of the Act states that any alien who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services in consultation with the Attorney General)-

> (I) to have a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others, or
>
> (II) to have had a physical or mental disorder and a history of behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or to lead to other harmful behavior, is inadmissible.

Section 212(g)(3) of the Act provides that the Attorney General may waive the application of subsection (a)(1)(A)(iii) in the case of any alien, in accordance with such terms, conditions, and controls, if any, including the giving of bond, as the Attorney General, in her discretion after consultation with the Secretary of Health and Human Services, may by regulation prescribe.

8 C.F.R. 212.7(b) contains the regulations regarding an alien with certain mental conditions who is eligible for an immigrant visa but requires the approval of a waiver of grounds of inadmissibility. The regulations stipulate that the applicant or sponsoring family

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member shall submit a waiver application and a statement to the appropriate consular or Service office indicating that arrangements have been made to provide the alien's complete medical history, including details of any hospitalization or institutional care or treatment for any physical or mental condition; findings as to the alien's current physical condition, including reports of chest X-ray examination and of serologic test for syphilis, and other pertinent diagnostic tests, and findings as to the alien's current mental condition, with information as to prognosis and life expectancy and with a report of a psychiatric examination conducted by a psychiatrist who shall, in case of mental retardation, also provide an evaluation of the alien's intelligence. For an alien with a past history of mental illness, the medical report shall also contain available information on which the U.S. Public Health Service can base a finding as to whether the alien has been free of such mental illness for a period of time sufficient in the light of such history to demonstrate recovery. The medical report is then forwarded to the U.S. Public Health Service for review.

The record reflects that the applicant slashed his left forearm with a blade in December 1997. The psychiatric evaluation conducted on September 17, 1998 determined that the applicant's harmful behavior is not yet in remission with remission being defined as no pattern of the behavioral element of the disorder for the past two years. Under the guidelines prescribed by the Center for Disease Control (CDC), remission is defined as no pattern of the disorder for the past five years.

The applicant in this matter has been determined to have a Class A medical condition and sufficient time has not elapsed to safely establish that the applicant is in remission. Therefore, the officer in charge's decision will be affirmed, and the appeal will be dismissed.

ORDER: The appeal is dismissed.